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10/826,718	04/16/2004	Glen Anderson	P2007US00	2184
24333 7590 02/08/2007 GATEWAY, INC. ATTN: Patent Attorney 610 GATEWAY DRIVE MAIL DROP Y-04 N. SIOUX CITY, SD 57049			EXAMINER NGUYEN, PHILLIP H	
			ART UNIT 2191	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/08/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/826,718

Applicant(s)

ANDERSON, GLEN

Examiner

Phillip H. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>20040416</u> | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This action is in response to the original filing date of April 16, 2004. Claims 1-52 are pending and have been considered below.

#### ***Examiner's Note:***

2. Applicant appears to be attempting to invoke 35 U.S.C. 112 6<sup>th</sup> paragraph in claim 42 by using "means-plus-function" language. However, Examiner notes that the only "means" for performing these cited functions in the specification appears to be software. Since no other specific structural limitations are disclosed in the specification, the claims have not invoked 35 U.S.C. 112 6<sup>th</sup> paragraph when considered below.

#### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claim 1-41 and 46-52 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 1, 35, 46, the claimed language raises a question to Examiner as to whether the download and installation of the software product to the hardware unit is still performing if the transaction determined to be not authorized. For instance, claim 1 recites, "assembling, by the download supervisor, a download/installation instruction...if the transaction is determined to be authorized" gives an alternative path, which is when the transaction determined to be not authorized. Since, there is a doubt

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that whether the claim would accomplished a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C.

101. The claim is non-statutory. Claims 2-34, 36-41, and 47-52 directly or indirectly depend on claims 1, 35, and 46 respectively, and therefore, have been addressed in connection with the rejection set forth to claims 1, 35, and 46 above.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1, 12, 18, 33, 35, 40, 42, 46, and 51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 18, 35, 42, and 46, the phrase "substantially" is unclear to Examiner whether substantially up to date version is the latest version or any newer version of software product. Applicant is required to clarify the claim to be more specific. Additional item to consider is whether the download and installation still perform when the transaction number determined to be not authorized.

Regarding claim 12, recites "hardware" is unclear to Examiner whether the hardware is the "hardware unit" as in claim 11 or it's a different one. For examining purposes, Examiner interprets "hardware" as "hardware unit".

Regarding claims 33, 40, and 51, the phrase "and the like" renders the claims indefinite because the claims include elements not actually disclosed (those

encompassed by "and the like"), thereby rendering the scope of the claims unascertainable. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-30, 33-37, 39-42, and 44-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Cheng et al. (United States Patent No.: US 6,542,943 B2).

As per claim 1:

Cheng discloses a method for downloading substantially up to date versions of selected software from a plurality of software vendors over a network and for installing the software to a hardware unit, the network comprising a first software handling machine configured to execute a download manager ("**client computer 101**" Col 6, line 20), a second software handling machine configured to execute a download supervisor ("**service provider computer 102**" Col 6, line 21) and a plurality of download servers for downloading software from the plurality of vendors ("**a number of software vendor computers 103**" Col 6, line 22), the method comprising:

- associating a transaction identifier with selection data comprising a software selection ("**a unique registration number to the user. This number may**

- be stored on the client computer 101 and used during subsequent logins to identify the user to the service provider computer 102**" Col 7, line 40-43);
- sending a download transaction request comprising the transaction identifier from the download manager to the download supervisor (**"the user logs in 201 to the service provider computer 102 with the client application 104 in a conventional manner, providing a user ID, a password"** Col 7, line 16-18; **"the registered users are authenticated 203 by the service provider computer 102"** Col 7, line 44-45);
  - determine, by the download supervisor, whether the requested download transaction is authorized (**"the registered users are authenticated 203 by the service provider computer 102. Authentication ensures that only users who are properly authorized by the service provider can obtain updates for software products"** Col 7, line 44-49);
  - assembling, by the download supervisor, a download/installation instruction comprising substantially up-to-date software access information for the software selection, if the transaction is determined to be authorized (**"update database 709 may also store information describing an installation process for installing a software update"** Col 10, line 58-60, **service provider computer 103 contains an update database which stores software update description and once a user is authorized, the**

**description is provided to client application 104 for installation of the software update);**

- communicating the download/installation instruction from the download supervisor to the download manager (**"the client application 104 downloads 209 the ...installation information, such as installation program, files and the like"** Col 8, line 41-43); and
- performing a download and installation of the software selection to the hardware unit by the download manager pursuant to the download/installation instruction (**"client application 104 downloads 209 the software update, along with installation information, such as installation programs, files, and the like"** Col 8, line 41-43; **"Once the download and applicable payment are complete, the software update is physically installed on the client computer 101"** Col 8, line 59-60).

**Note:** The claim recites the word "for" in the preamble of the claim, which indicates intended use and as such does not carry patentable weight. The limitations following the phrase "for" describe only intended use but not necessarily required functionality of the claim.

As per claim 2:

Cheng discloses the method as in claim 1 above; and further discloses:

- wherein the transaction identifier comprises a serial number (**"a unique registration number"** Col 7, line 40).

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As per claim 3:

Cheng discloses the method as in claim 2 above; and further discloses:

- wherein the software access information comprises a network address for a download server (**"The network location provided in the software update information is specified by one or more universal resource locator (URL)"** Col 3, line 20-22).

As per claim 4:

Cheng discloses the method as in claim 1 above; and further discloses:

- wherein the first software handling machine comprises the hardware unit (**"A client computer 101 is of conventional design, and includes..., an addressable memory 900."** Col 13, line 4-5).

As per claim 5:

Cheng discloses the method as in claim 1 above; and further discloses:

- wherein the download manager is configured to execute in a boot sequence of the first software handling machine (**"the client computer 101 executes the client application 104"** Col 13, line 30).

As per claim 6:

Cheng discloses the method as in claim 5 above; and further discloses:



- wherein the download manager loads from a removable storage media (**"the client application 104 may be provided to the client computer 101 on a computer readable media, such as a CD-ROM, diskette, 8 mm tape..."** Col 13, line 40-45).

As per claim 7:

Cheng discloses the method as in claim 4 above; and further discloses:

- wherein the first software handling machine comprises a personal computer (**"client computer 101"** Col 6, line 20).

As per claim 8:

Cheng discloses the method as in claim 1 above; and further discloses:

- wherein the download manager is configured to launch from the hardware unit (**"the client computer 101 executes the client application 104 in memory 900"** Col 13, line 30).

As per claim 9:

Cheng discloses the method as in claim 8 above, but does not explicitly disclose:

- wherein the download manager is configured to launch in a boot sequence of the hardware unit. **It is inherent in Cheng in order for the client application 104 in the memory 900 to perform the software updates.**

As per claim 10:

Cheng discloses the method as in claim 8 above; and further discloses:

- wherein the download manager is preconfigured to send a download transaction request comprising a predetermined selection of software ("**the client application 104 requests, for a software product to be updated, a transaction permission from the service provider computer 102**" Col 17, line 42-44).

As per claim 11:

Cheng discloses the method as in claim 1 above; and further discloses:

- wherein the hardware unit is linked to the first software handling machine by a dedicated communications link ("**the client application 104 may be provided to the client computer 101 by electronic communication over the network 106**" Col 13, line 41-44).

As per claim 12:

Cheng discloses the method as in claim 11 above; and further discloses:

- wherein the download manager is configured to execute upon detecting that the hardware on the dedicated communications link ("**the client application 104 may be provided to the client computer 101 by electronic communication over the network 106 for installation and execution thereon**" Col 13, line 41-45).

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As per claim 13:

Cheng discloses the method as in claim 12 above; and further discloses:

- wherein the hardware unit is linked to the first software handling machine over a network comprising a local area network ("**other network embodiment, such as a WAN, LAN...**" Col 13, line 17).

As per claim 14:

Cheng discloses the method as in claim 14 above; and further discloses:

- wherein the network comprises the Internet ("**Internet**" Col 13, line 15).

As per claim 15:

Cheng discloses the method as in claim 1 above; and further discloses:

- storing a record of the download transaction in a central database ("**update database 709 maintains information identifying a large number of software products, information about the software updates that are available from the diverse software product vendors for these software products...**" Col 10, line 29-35).

As per claim 16:

Cheng discloses the method as in claim 1 above; and further discloses:

- wherein data comprising the transaction identifier is encrypted  
("authentication and verification may be implemented using convention encryption techniques" Col 6, line 54).

As per claim 17:

Cheng discloses the method as in claim 1 above; and further discloses:

- wherein the software selection is predetermined ("**The result obtained by the system analyzer 907 from the product locator table 803 is a list 1013 of the installed software products on the client computer 101... The system analyzer 907 uses this list to query the service provider computer 102 to determine 205 for which of these products there is an applicable update**" Col 14, line 38-44, **This is a predetermined selection before given to users to manually select from the predetermined list**).

As per claim 18:

Cheng discloses the method as in claim 1 above; and further discloses:

- wherein the selection data is determined in whole or in part substantially at the time of sale of the hardware unit ("**The result obtained by the system analyzer 907 from the product locator table 803 is a list 1013 of the installed software products on the client computer 101... The system analyzer 907 uses this list to query the service provider computer 102 to determine 205 for which of these products there is an applicable update**"

**Col 14, line 38-44, this selected list includes all the selection data determined at the time the client computer 101 sold).**

As per claim 19:

Cheng discloses the method as in claim 1 above; and further discloses:

- wherein the selection data is determined in whole or in part in an interactive process ("**the user selects one or more of the list software updates**" Col 15, line 14).

As per claim 20:

Cheng discloses the method as in claim 19 above; and further discloses:

- obtaining the selection data by a point of sale application ("**The result obtained by the system analyzer 907 from the product locator table 803 is a list 1013 of the installed software products on the client computer 101... The system analyzer 907 uses this list to query the service provider computer 102 to determine 205 for which of these products there is an applicable update**" Col 14, line 38-44, **this is the list of products installed to client computer 101 at the time the products sold).**

As per claim 21:

Cheng discloses the method as in claim 20 above; and further discloses:

- wherein obtaining the selection data by a point of sale application comprises providing an automated kiosk for selecting software and recording the selection for a download transaction (**"the client application 104 displays 206 the list of applicable software updates to the user, for review and selection thereof of updates for purchase and installation"** Col 7, line 66-68).

As per claim 22:

Cheng discloses the method as in claim 1 above; and further discloses:

- wherein the selection data is determined in whole or in part by looking up the transaction identifier in a central database (**"Once all of the installed software products have been reviewed against the product table 805, the system analyzer 907 will have a list 1007 of the applicable software updates"** Col 14, line 66-67).

As per claim 23:

Cheng discloses the method as in claim 1 above; and further discloses:

- wherein determining whether the download transaction is authorized comprises evaluating the transaction identifier (**"the registered users are authenticated by the service provider computer 102"** Col 7, line 44-45).

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As per claim 24:

Cheng discloses the method as in claim 1 above; and further discloses:

- interrogating the hardware unit to obtain information comprising preexisting software ("**system analyzer 907 for analyzing 204 the client computer 101 to determine the list of installed software products**" Col 13, line 62-63).

As per claim 25:

Cheng discloses the method as in claim 24 above; and further discloses:

- wherein interrogating the hardware unit to obtain information comprising preexisting software comprises executing a Desktop Management Interface ("**system analyzer 907 traverses the entire method table 801, and invokes 1003 each scan method 812 to search the Registry and configuration files 915 of the client computer 101**" Col 14, line 10-13, **execution of Desktop Management Interface must performed in order for the system analyzer 907 to perform the analyzing on the client computer 101 to obtain the Registry and configuration information**).

As per claim 26:

Cheng discloses the method as in claim 24 above; and further discloses:

- modifying the selection data in response to the information comprising preexisting software ("**the result obtained by the system analyzer 907 from the product locator table 803 is a list 1013 of the installed software**").

**products on the client computer 101...the system analyzer 907 uses this list to query the service provider computer 102 to determine 205 for which of these products there is an applicable update” Col 14, line 38-44).**

As per claim 27:

Cheng discloses the method as in claim 1 above; and further discloses:

- wherein the software access information comprises an authentication code for activating or downloading software (“**code authentication**” Col 6, line 49).

As per claim 28:

Cheng discloses the method as in claim 27 above; and further discloses:

- wherein the authentication code is provided by an authentication subsystem of the download supervisor (“**verification subsystems**” Col 6, line 49).

As per claim 29:

Cheng discloses the method as in claim 1 above; and further discloses:

- storing download transaction data to a central database (“**updating of the update database 709 to include new software updates from various software vendors**” Col 18, line 7-8).



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As per claim 30:

Cheng discloses the method as in claim 29 above; and further discloses:

- wherein the download transaction data comprises a download transaction status ("**contains information about the current update for the software products, and the product... which identifies the various software products for which their updates are the most frequently modified**" Col 18, line 12-16).

As per claim 33:

Cheng discloses the method as in claim 1 above; and further discloses:

- Wherein the software is data comprising music, images, video, and the like ("**work processing, desktop publishing, graphics, adventure games...**" Col 23, line 30).

As per claim 34:

Cheng discloses the method as in claim 1 above; and further discloses:

- wherein the software is data comprising data related to services ("**each user is charged a service fee for using the service provider computer 102 to download software updates**" Col 17, line 6-8).

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As per claim 35:

Cheng discloses a system for downloading software to a hardware unit from a plurality of vendors over a network, the system comprising:

- a plurality of download servers in the network ("**multiple servers**" Col 16, line 33) for downloading software from the plurality of software vendors ("**software vendor computers 103**" Col 16, line 23);
- a first software handling machine in the network ("**Client computer 101**" Col 13, line 4) and linked to the hardware unit ("**A client computer 101 is of conventional design and include an addressable memory 900**" Col 13, line 4-5), the first software handling machine configured to execute a download manager ("**client computer 101 executes the client application 104 in memory 900**" Col 13, line 30), the download manager adapted to initiate a download/installation transaction comprising selected software to be download to the hardware unit from one or more of the plurality of download servers ("**the client application 104 then analyzes 204 the client computer 101 to determine a list of installed software products**" Col 7, line 50-51), to send a transaction identifier in a download transaction request to a download supervisor over the network ("**return a unique registration number to the user... used during subsequent logins to identify the user to the service provider computer102**" Col 7, line 40-43), and to download and install the selected software to the hardware unit pursuant to a download/installation instruction received in response to the download

- transaction request (**client application 104 downloads 209 the software update, along with installation information, such as installation programs, files, and the like**" Col 8, line 41-43; **"Once the download and applicable payment are complete, the software update is physically installed on the client computer 101"** Col 8, line 59-60); and
- a second software handling machine in the network configured to execute the download supervisor (**"service provider computer 102"** Col 6, line 21), the download supervisor adapted to determine whether the download transaction request is authorized (**"the registered users are authenticated 203 by the service provider computer 102"** Col 7, line 44-45), and, if the transaction is determined to be authorized, to assemble a download/installation instruction comprising substantially up-to-date software access information for the software selection (**"update database 709 may also store information describing an installation process for installing a software update"** Col 10, line 58-60, **service provider computer 103 contains an update database which stores software update description and once a user is authorized, the description is provided to client application 104 for installation of the software update**), and to send the download/installation instruction to the download manager (**"the client application 104 downloads 209 the installation information, such as installation program, files and the like"** Col 8, line 41-43).

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**Note:** The claim recites the phrases “for” and “adapted to” in the preamble and the body of the claim, indicate intended use and as such does not carry patentable weight. The limitations following the phrase “for” or “adapted to” describe only intended use but not necessarily required functionality of the claim.

As per claim 36:

Cheng discloses the system as in claim 36 above; and further discloses:

- wherein the software access information comprises an authentication code  
    (**“code authentication”** Col 6, line 49).

As per claim 37:

Cheng discloses the system as in claim 35 above; and further discloses:

- wherein the download manager is configured to execute on the hardware unit  
    (**“the client computer 101 executes the client application 104 in memory 900”** Col 13, line 30).

As per claim 39:

Cheng discloses the system as in claim 35 above; and further discloses:

- wherein the software access information comprises an authentication code for activating software and a network address for downloading software (**“the user profile database 711 generally stores information descriptive of each user. This information may include the user ID, password, digital**

**signature..." Col 20, line 33-35, user ID, password, digital signature... are the authentication codes).**

As per claim 40:

Cheng discloses the system as in claim 35 above; and further discloses:

- wherein the software is data comprising music, images, video, and the like (**"work processing, desktop publishing, graphics, adventure games..."** Col 23, line 30).

As per claim 41:

Cheng discloses the system as in claim 35 above; and further discloses:

- wherein the software is data comprising data related to services (**"each user is charged a service fee for using the service provider computer 102 to download software updates"** Col 17, line 6-8).

As per claim 42:

Cheng discloses a hardware unit configured to execute a download manager (**"a client computer 101 executes the client application 104"** Col 13, line 30) capable of downloading and installing selected software from a plurality of software vendors from a plurality of download servers in a network, comprising:

- means to initiate the download manager during a boot sequence of the hardware unit (**"the update process 200 is typically initiated on the client**

**computer 101. The user may manually initiate the process or it may occur automatically... the process may be initiated by the service provider computer 102..." Col 7, line 9-14);**

- means to provide a transaction identifier to a download supervisor in the network to enable the download supervisor to identify ("**the service provider computer 102 returns a unique registration number to the user**" Col 7, line 39-40) and validate the download transaction ("**the registered users are authenticated 203 by the service provider computer 102**" Col 7, line 44-45);
- means to receive a communication from the download supervisor comprising a download/installation instruction that includes substantially up-to-date software access information for the selected software of the download transaction ("**the client application 104 downloads 209 the installation information, such as installation program, files and the like**" Col 8, line 41-43); and
- means to perform the download and installation of the selected software to the hardware unit according to the download/installation instruction ("**client application 104 downloads 209 the software update, along with installation information, such as installation programs, files, and the like**" Col 8, line 41-43; "**Once the download and applicable payment are complete, the software update is physically installed on the client computer 101**" Col 8, line 59-60).

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**Note:** The claim recites the phrases “for” and “capable of” in the preamble and the body of the claim, which indicate intended use and as such does not carry patentable weight. The limitations following the phrase “for” or “capable of” describe only intended use but not necessarily required functionality of the claim.

As per claim 44:

Cheng discloses the hardware unit as in claim 42 above; and further discloses:

- wherein the selected software may be selected or modified by a user in an interactive process (**“the user selects one or more of the list software updates”** Col 15, line 14).

As per claim 45:

Cheng discloses the hardware unit as in claim 42 above; and further discloses:

- wherein the selected software comprises a predetermined selection (**“The result obtained by the system analyzer 907 from the product locator table 803 is a list 1013 of the installed software products on the client computer 101... The system analyzer 907 uses this list to query the service provider computer 102 to determine 205 for which of these products there is an applicable update”** Col 14, line 38-44, **This is a predetermined selection before given to users to manually select from the predetermined list**).

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As per claim 46:

Cheng discloses a program comprising a storage medium tangibly embodying program instructions for downloading and installing software to a hardware unit from a plurality of software vendors over a network, the program instructions including instructions operable to cause at least one programmable processor to:

- provide a download manager executable on a first software handling machine in the network ("**client application 104**" Col 13, line 30), the download manager adapted to initiate a download/installation transaction comprising selected software to be downloaded to the hardware unit from one or more of a plurality of download servers in the network ("**The result obtained by the system analyzer 907 from the product locator table 803 is a list 1013 of the installed software products on the client computer 101... The system analyzer 907 uses this list to query the service provider computer 102 to determine 205 for which of these products there is an applicable update**" Col 14, line 38-44, **This is a predetermined selection before given to users to manually select from the predetermined list**), to provide a transaction identifier to identify and validate the download transaction ("**a unique registration number to the user...stored on the client computer 101 and use during subsequent logins to identify the user to the service provider computer 102**" Col 7, line 40-43) and to perform a download and an installation of selected software to the hardware unit pursuant to a download/installation instruction ("**client application 104**



- downloads 209 the software update, along with installation information, such as installation programs, files, and the like” Col 8, line 41-43; “Once the download and applicable payment are complete, the software update is physically installed on the client computer 101” Col 8, line 59-60);**
- provide a download supervisor executable on a second software handing machine in the network (**“a security module 701” Col 16, line 39**), the download supervisor adapted to evaluate data comprising the transaction identifier to determine whether the download transaction is authorized (**“the security module 701 handles the authentication of the user as an authorized user of the service provider computer 102” Col 16, line 39-40**) and, if the transaction is authorized, to communicate a download/installation instruction comprising substantially up-to-date software access information for the selected software from the download supervisor to the download manager (**“client application 104 downloads 209 the software update, along with installation information, such as installation programs, files, and the like” Col 8, line 41-43; “Once the download and applicable payment are complete, the software update is physically installed on the client computer 101” Col 8, line 59-60);**
  - associate the transaction identifier with the selected software for the download transaction (**“a unique registration number to the user. This number may be stored on the client computer 101 and used during**

- subsequent logins to identify the user to the service provider computer 102** Col 7, line 40-43);
- send a download transaction request comprising the transaction identifier over the network from the download manager to the download supervisor (**"the user logs in 201 to the service provider computer 102 with the client application 104 in a conventional manner, providing a user ID, a password"** Col 7, line 16-18; **"the registered users are authenticated 203 by the service provider computer 102"** Col 7, line 44-45); and
  - perform the download and installation of software to the hardware unit by the download manager pursuant to the download/installation instruction (**"client application 104 downloads 209 the software update, along with installation information, such as installation programs, files, and the like"** Col 8, line 41-43; **"Once the download and applicable payment are complete, the software update is physically installed on the client computer 101"** Col 8, line 59-60).

**Note:** The claim recites the phrases "for" and "adapted to" in the preamble and the body of the claim, which indicates intended use and as such does not carry patentable weight. The limitations following the phrase "for" or "adapted to" describe only intended use but not necessarily required functionality of the claim.

As per claim 47:

Cheng discloses the program as in claim 46 above; and further discloses instructions operable to cause at least one programmable processor to:

- cause the download manager to initiate in a boot sequence of the first software handling machine ("**the client application 104 requests, for a software product to be updated**" Col 17, line 41).

As per claim 48:

Cheng discloses the program as in claim 46 above; and further discloses instructions operable to cause at least one programmable processor to:

- cause the download manager to launch from the hardware unit during a boot sequence of the hardware unit ("**the client computer 101 executes the client application 104 in memory 900**" Col 13, line 30).

As per claim 49:

Cheng discloses the program as in claim 48 above; and further discloses instructions operable to cause at least one programmable processor to:

- cause the download manager to be preconfigured for downloading a predetermined software selection ("**The result obtained by the system analyzer 907 from the product locator table 803 is a list 1013 of the installed software products on the client computer 101... The system analyzer 907 uses this list to query the service provider computer 102 to**

**determine 205 for which of these products there is an applicable update”**

Col 14, line 38-44, **This is a predetermined selection before given to users to manually select from the predetermined list).**

As per claim 50:

Cheng discloses the program as in claim 49 above; and further discloses instructions operable to cause at least one programmable processor to:

- cause the download supervisor to store a record of the download transaction in a central database (**“update database 709 maintains information identifying a large number of software products, information about the software updates that are available from the diverse software product vendors for these software products...”** Col 10, line 29-35).

As per claim 51:

Cheng discloses the program as in claim 46 above; and further discloses:

- wherein the software is data comprising music, images, video, and the like (**“work processing, desktop publishing, graphics, adventure games...”** Col 23, line 30).

As per claim 52:

Cheng discloses the program as in claim 46 above; and further discloses:

- wherein the software is data comprising data related to services ("**each user is charged a service fee for using the service provider computer 102 to download software updates**" Col 17, line 6-8).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al. (United States Patent No.: US 6,542,943 B2).

As per claim 31:

Cheng discloses the method as in claim 29 above, but does not explicitly disclose:

- wherein the download transaction data comprises a transaction hold status.

However, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to recognize that Cheng's approach gives clients an option to select which software product to update ("**user can select one or more software products to update**" Col 8, line 25). It is also obvious to give clients an option to select when to update the software. One of ordinary skill in the art would have been motivated to allow clients to select date and time for updating the software. This

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gives clients more flexibility when it comes to update software products. Therefore, if the clients select date and time to update software products, the hold status must be recorded since Cheng's approach include an Activity Log for recording user activities during the updating software products (Col 20, line 60).

As per claim 32:

Cheng disclose the method as in claim 31 above, but does not explicitly discloses:

- wherein communicating a download/installation instruction from the download supervisor to the download manager is held in abeyance while a transaction is in a hold status. **It is inherent in Cheng's approach since the updating is in a hold status.**

11. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al. (United States Patent No.: US 6,542,943 B2), in view of Apfel et al. (United States Patent No.: 5,974,454).

As per claim 38:

Cheng discloses the system as in claim 35 above, but does not explicitly discloses:

- wherein the first software handling machine linked to the hardware unit by an external bus.

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However, Apfel discloses an analogous system include:

- wherein the first software handling machine linked to the hardware unit by an external bus ("**input devices are often connected to the processing unit 21 through a serial port interface 46 that is coupled to the system bus , but may be connected by other interfaces, such as...universal serial bus (USB)**") Col 4, line 51-55).

Therefore, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify Cheng's system to include USB. One of ordinary skill would have been motivated to use USB to connect between hardware unit and software handling machine because USB is easier to manage. No required to have operating system compatibility, no restarting before unplugging or plugging in is needed.

12. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al. (United States Patent No.: US 6,542,943 B2), in view of Moshir et al. (United States Patent No.: US 6,990,660 B2).

As per claim 43:

Cheng discloses the hardware unit as in claim 42 above, but does not explicitly discloses:

- wherein the means to initiate the download manager during a boot sequence of the hardware unit comprises executing a bootstrap loader to establish

basic connectivity and download functions for the hardware unit in order to load a program to which the bootstrap loader hand off control.

However, Moshir discloses an analogous hardware unit that includes:

- wherein the means to initiate the download manager during a boot sequence of the hardware unit comprises executing a bootstrap loader to establish basic connectivity and download functions for the hardware unit in order to load a program to which the bootstrap loader hand off control (**"installed the Bootstrap Agent software on the computer...The bootstrap agent must be able to: request the initial tasklist...download the Full agent's install file..."** Col 24, line 35-59).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cheng's approach to include bootstrap. One of ordinary skill in the art would have been motivated to include bootstrap software so it can be able to perform: requests the task list, receives task list, downloads and so forth.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip H. Nguyen whose telephone number is (571) 270-1070. The examiner can normally be reached on Monday - Thursday 10:00 AM - 3:00 PM EST.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PN  
01/24/2007

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